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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 28th February, 2014

+ **CRL.L.P. 229/2012**

STATE GOVT. OF NCT OF DELHI Petitioner
Through: Mr. Rajat Katyal, APP for the State.

versus

RAJAN @ RAJA Respondent
Through: Mr. Neeraj Bhardwaj, Advocate,
DHCLSC.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

SANJIV KHANNA J. (ORAL)

1. This Criminal Leave Petition is directed against the judgment of acquittal dated 22.12.2010 passed in Sessions Case No.10 of 2010 arising out of FIR No.265/2009, Police Station Kotwali under Section 302 of the Indian Penal Code, 1860 (IPC). By the impugned judgment, the Respondent herein Rajan @ Raja has been acquitted for the charge of having committed murder of his wife Shakuni with the broken piece of glass on 27.09.2009 on the footpath near Bankhundi Mandir.
2. We have heard, Mr. Rajat Katyal, learned Additional Public Prosecutor

for the State and Mr. Neeraj Bhardwaj, Amicus Curiae, who appears for the Respondent.

3. The prosecution case heavily relies upon the testimony of PW-5 Pushpender, who is also the complainant. The prosecution case also relies upon recovery of bloodstained clothes from the Respondent.
4. The Trial Court in the impugned judgment has not accepted the deposition of PW-5 Pushpender and has given various reasons for not accepting his testimony. These are:-
 - (i.) DD No.46-A (Ex.PW-3/I) was recorded at 22:16 hours on 28.09.2009 in relation to a man being stabbed in a quarrel near Bankhundi Mandir.
 - (ii.) Head Constable Jagat Singh PW-3 who was assigned the investigation and had reached the spot along with Constable Vinod Kumar, has not stated and deposed about presence of PW-5, Pushpender at the spot or the place of occurrence. PW-3 has not stated or deposed anything as to inquiry or investigation conducted by him immediately after reaching the spot.
 - (iii.) Constable Vinod Kumar did not appear and depose in the Court.

- (iv.) Sub-Inspector N.P. Tiwari, PW-9 conducted further investigation after the deceased had died in the morning on 28.09.2009. Shakuni had expired as per death summary Ex.PW-2/A at 6:30 a.m. in the hospital on 28.09.2009. Thereupon, FIR in question was registered at 8:25 a.m. after recording statement of PW-5 Pushpender, Ex.PW-5/A. Thus, there was considerable unexplained delay in recording statement of PW-5, Ex.PW-5/A, and registration of the FIR.
- (v.) PW-5 Pushpender had deposed that the tea shop where he was working was situated in the busy thoroughfare and police had interrogated employees as well as owner of the tea stall. At the time of incident other employees were also present at the tea shop and went to their respective places after the shop closed. Another person known as *biriwala* had remained at the shop as he used to sleep in the shop itself. PW-5 also used to sleep in the shop. He also claimed that he was present at the spot when the PCR van had arrived, though thereafter he had gone to Ramlila ground and returned to the shop at 11:00 p.m. Thus, as per Court deposition of Pushpender (PW-5) there were several eye witnesses to the occurrence who were present when Head

Constable Jagat Singh (PW-3) had reached the spot. Even PW-5 was present. Strangely, the said eye witnesses were not examined and cited as witnesses. Statement of PW-5 was not recorded on 27.09.2009.

- (vi.) As per the MLC Ex.PW-1/A at the time of admission, the patient *i.e.* Shakuni was conscious and oriented. This has been specifically observed in the MLC. The doctors could be excused for not asking the patient as to how and who had caused injuries but the police officers should have asked the said question and ascertained the facts. As per the MLC Ex.PW-1/A, the deceased was taken to the hospital in a PCR Jeep and admitted by Head Constable Anil Kumar. The said Head Constable Anil Kumar was not cited and did not appear as a witness. Rajan was not mentioned as a culprit/perpetrator in the MLC. As per the prosecution version, Shakuni knew Rajan and therefore there was no cause or reason for her not to reveal his name to the police officers though she was conscious and oriented. In a normal course, she would have definitely revealed the name of the perpetrator to the PCR officials. Even PW-5 had claimed that he had disclosed this fact to the PCR officials. Failure to

examine PCR officials raises doubt about the prosecution version/allegations.

- (vii.) Respondent in his statement recorded under Section 313 of the Code of Criminal Procedure, 1973 (Cr.P.C.) had claimed that he had been falsely implicated to solve the case. The deceased was known to him for the last few years and she was not his wife and that he was not having live in or sexual relationship with her. He claimed that the deceased had relationship with PW-5 who was a drug addict and used to sell drugs in the area. PW-5 was also residing on the pavement and used to steal money from persons sleeping on the pavement which was objected to by him and therefore PW-5 had a grudge against him and had deposed falsely.
5. We have examined the impugned judgment, MLC and other material, deposition of witnesses including and more particularly statements of PW-5 and PW-3. We find that the reasoning given by the Trial Court is cogent, logical and does not require interference. The MLC (Ex.PW-1/A) records that the patient at the time of admission on 27.09.2009 at 11:30 p.m. was conscious and oriented. The patient and Head

Constable Anil Kumar from the PCR van, who brought the patient, had given alleged history of physical assault at 10:00 p.m. on the same day. MLC states that the said history was given by the person who had brought the patient and the patient herself. Head Constable Anil Kumar, as noticed above, has not been produced. The MLC does not mention the name of the Respondent as perpetrator though as per the prosecution version, the deceased knew the perpetrator very well and this fact is also not denied by the Respondent.

6. PW-5 Pushpender in his court deposition no doubt, has implicated the Respondent but it is noticeable that his statement was recorded on the next day after the deceased had died. As per the Court deposition of PW-5 there were about eight persons working in the tea shop and there were *biri/cigarette* and other shops nearby. The place was busy thoroughfare. PW-5 claimed that several other persons were present including a person known as *biriwala*. PW-5 avers that he had told the PCR officials that the Respondent had killed Shakuni. However, these facts are completely missing and not deposed to and stated by PW-3 ASI Jagat Singh who had reached the spot after DD No.46-A (Ex.PW-3/I) was assigned to him for investigation. He has not deposed and referred to presence of PW-5 at the spot. These facts, coupled with the

fact that the PCR officials who had visited the spot immediately after the occurrence have not deposed, leave several questions unanswered and ambiguities get confounded by the delay in recording statement of PW-5 and facts mentioned in MLC. PW-5 was cross-examined and questioned that he used to reside with the deceased in the tea shop and the deceased used to live with him as his wife and he used to feel jealous as she used to speak to Rajan (the Respondent). It was suggested that PW-5 had quarrel with the deceased and in a fit of rage, he struck her (the deceased) with a glass bottle and thereafter framed the Respondent.

7. As far as recovery of bloodstained clothes is concerned, we notice that human blood was found on shirt Ex.4-A, but the blood group could not be ascertained. Similarly, human blood was found on shirt, salwar, lady's shirt, piece of muffler, etc. but the blood group could not be ascertained. Though, this aspect has not been referred to in the impugned judgment, we do not think that on this evidence, the impugned judgment requires consideration or reversal. We notice that the blood could not be detected on concrete and cement collected from the crime spot described as earth control and the alleged weapon of offence *i.e.* broken glass and the pant which was worn by the

Respondent.

8. In view of the foregoing discussion, the application for leave to appeal is dismissed.

(SANJIV KHANNA)
JUDGE

(G.P. MITTAL)
JUDGE

FEBRUARY 28, 2014
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